IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/02/2004

CORAM

THE HONOURABLE Mr. JUSTICE P.D.DINAKARAN

Writ Petition No.3205 of 2002

C.S.Nagarajan .. Petitioner

-vs-

1. The State of Tamil Nadu,
rep. by its Secretary to
Govt.,
Commercial Taxes Department,
Fort St. George,
Madras-9.

2. The Additional Registrar (Chits),
O/o. Inspector General of
Registration,
Chennai-28.

3. The Inspector General of
Registration,
Raja Annamalaipuram,
Chennai-600028. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorari as stated therein.

For Petitioner : Mr.R.Muthukkannu

For Respondents : Mrs.Thenmozhi Sivaperumal,
Addl. Govt. Pleader.

:O R D E R

The petitioner is the licensed Document writer under the provisions of the Tamil Nadu Document Writers Licence Rules, 1982, (hereinafter referred to as 'the Rules'), framed by the State of Tamil Nadu exercising the powers conferred under Section 89-B of the Registration Act.

1.2. Rule 2(d) of the Rules defines the Document writer as follows:

'Document writer' means and includes a person engaged in the profession of preparing documents, namely, doing the work of conveyancing including investigation of title, preparation of draft deeds and engrossing the deed on the stamp paper or plain paper for registration.'

1.3. It is not in dispute that the petitioner satisfies the conditions required for the grant of licence as provided under Rules 4, 6 and 7 of the Rules, which deal with the eligibility for licence, test qualification and age qualification; nor he suffers from any disqualification under Rule 5 of the Rules and hence, he was granted licence in Form No.B under Rules 9 and 13(a) of the Rules since 1968 and the same got renewed from time to time.

1.4. However, alleging that the petitioner had written a document bearing document No.1843 of 1993 registered before the Sub Registrar, Chinnasalem, undervaluing the property sold thereunder for a sum of Rs.1,90,000/- as sale consideration, even though the same was valued in the agreement for sale dated 9.6.1993, for a sum of Rs.2,47,000/-, which was also written by the petitioner, the third respondent issued a show cause notice dated 23.10.1997 to the petitioner, proposing to cancel the licence granted to the petitioner for the alleged violation of condition (g) of the licence, requiring the petitioner to submit his explanation within 21 days.

1.5. On receipt of the said show cause notice dated 23.10.1997, the petitioner submitted his detailed explanation on 23.12.1997, explaining that he did not suppress any consideration or the value agreed to between the parties at the time of executing the sale deed dated 7.10 .1993; that the agreement for sale dated 9.6.1993, alleged to have been written by the petitioner, was not brought to the notice of the petitioner by the parties at the time of writing the sale deed dated 7.10.1993; and that he was not responsible for any loss of revenue to the State Government.

1.6. However, without accepting the said explanation submitted by the petitioner on 23.12.1997, the second respondent by proceedings dated 2.7.1999, exercising the powers conferred under Rule 16(3) of the Rules, cancelled the licence of the petitioner for breach of condition (g) of the licence, holding that the petitioner has failed to set forth fully and truly the consideration or the value and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of duty with which it was chargeable, of course, after giving him an opportunity of being heard.

1.7. The said order of cancellation dated 2.7.1999 passed by the second respondent was served on the petitioner only on 3.9.1999 through the proceedings dated 3.9.1999 of the District Registrar, Kallakurichi. Hence, the petitioner preferred an appeal before the first respondent herein on 22.10.1999, reiterating his explanation submitted to the show cause notice dated 23.10.1997 issued by the third respondent.

1.8. The first respondent, however, in his proceedings dated 23.8.20 01, dismissed the appeal, both on the technical ground that the appeal is barred by limitation as well as on merits.

1.9. Aggrieved by the said proceedings of the first respondentGovernment dated 23.8.2001, confirming the order of cancellation of

the licence of the petitioner by the second respondent dated 2.7.1999, as communicated by the proceedings of the District Registrar, Kallakurichi, dated 3.9.1999, the petitioner has preferred the above writ petition seeking a writ of Certiorari to call for the records relating to the proceedings in Nee.Moo.No.25160/I3/97 dated 2.7.1999 of the second respondent, which was confirmed by the first respondent in G.O.(D) No.203, Commercial Taxes Department, dated 23.8.2001 and to quash the same.

2.1. Mr.R.Muthukkannu, learned counsel for the petitioner, invited my attention to para 3 of the order of the first respondent-appellate authority dated 23.8.2001, whereunder the appeal was dismissed, on merits, on the following grounds:
(i) the petitioner had violated condition (g) of the licence as he is alleged to have undervalued the property sold under the sale deed dated 7.10.1993, registered as Document No.1843 of 1993 on the file of the Sub Registrar, Chinnasalem;
(ii) the petitioner had also violated condition (e), as he failed to maintain the accounts up-to-date with respect to the money received from the parties; and
(iii) the petitioner was responsible for the loss of revenue to the State, as he colluded with the vendor and the purchaser with respect to the valuation of the property sold under Document No.1843/93, for evading stamp duty.
2.2. Mr.R.Muthukkannu, learned counsel for the petitioner, challenges the impugned proceedings of the first respondent dated 23.8.2001 on the following grounds:
(i) Since the original order of the second respondent dated 2.7.1999 was communicated to the petitioner only through the proceedings of the District Registrar, Kallakurichi, dated 3.9.1999 and the same was served on the petitioner on the same day viz., 3.9.1999 and as the petitioner had filed the appeal against the said order of the second respondent dated 2.7.1999 on 22.10.1999, the said appeal was well within the time prescribed under Rule 17(b) of the Rules, whereunder an appeal against the order of the Licensing Authority shall lie to the State Government within two months from the date of the order; and
(ii) the reasons that weighed the first respondent-appellate authority in dismissing the appeal, are untenable.

2.3. According to Mr.R.Muthukkannu, learned counsel for the petitioner, there is no violation of condition (g) of the licence, as he truly and correctly entered the consideration for the sale of property under Document No.1843 of 1993 as agreed to between the parties viz., the vendor and the purchaser therein; and even assuming the same was written by the petitioner, having not produced the agreement for sale dated 9.6.1993 at the time of writing the sale deed dated 7.10.1993 in Document No.1843/93, there was no occasion for the petitioner to peruse the said agreement for sale dated 9.6.1993, particularly when the same was not even registered; and consequently the allegation made against the petitioner that he was responsible for the loss of revenue to the State for having colluded with the parties viz., the vendor and the purchaser for undervaluing the property and evading the stamp duty, is not sustainable in law.

2.4. With regard to the alleged breach of condition (e) of the licence, it is brought to my notice that there was no allegation made against the petitioner in the show cause notice dated 23.10.1997 that the petitioner failed to maintain the accounts up-to-date with respect to the money received from the parties. In the absence of any such allegation in the show cause notice dated 23.10.1997 with regard to the violation of condition (e) of the licence, neither the second respondent-original authority nor the first respondent-appellate authority could make such allegation as to violation of condition (e) of the licence for cancelling the licence of the petitioner.

3. Per contra, Mrs.Thenmozhi Sivaperumal, learned Additional Government Pleader, reiterated the reasons that weighed the second respondent in passing the original order dated 2.7.1999 considering the explanation submitted by the petitioner dated 23.12.1997 and the reasons that weighed the first respondent-appellate authority in passing the impugned order dated 23.8.2001, confirming the order of the second respondent-original authority dated 2.7.1999.

4. I have given a careful consideration to the submissions of both sides.

5.1. Under the facts and circumstances of the case, the following substantial issues arise for consideration:
(i) Whether the appeal preferred by the petitioner is barred by limitation under Rule 17(b) of the Rules? and
(ii) Whether the cancellation of the licence issued to the petitioner for the alleged violation of conditions (e) and (g) of the licence is sustainable in law?

5.2.1. Issue No.I: Whether the appeal preferred by the petitioner is barred by limitation under Rule 17(b) of the Rules?

5.2.2. In this regard, it is appropriate to refer Rule 17(b) of the Rules:
'Rule 17: Appeals:-
(a) ...
(b) An appeal against the orders of the Licensing Authority shall lie to the State Government within two months from the date of the order.' (emphasis supplied)
5.2.3. It is true that Rule 17(b) of the Rules contemplates that the appeal against the order of the Licensing Authority shall lie to the State Government within two months from the date of the order. The order cancelling the licence of the petitioner is dated 2.7.1999 and the same was served on the petitioner on 3.9.1999 through the communication of the District Registrar, Kallakurichi, dated 3.9.1999, against which the petitioner preferred the appeal on 22.10.1999. But, the first respondent-appellate authority, strictly interpreting Rule 17 (b) of the Rules, held that the appeal is belated with a delay of 50 days, as the same was filed on 22.10.1999, as the order under appeal was passed on 2.7.1999, without taking note of the fact that the order of the second respondent dated 2.7.1999 was served on the petitioner only on

3.9.1999. Rule 17(b) of the Rules contemplates that the appeal shall lie to the State Government within two months from the date of the order, which shall be construed only from the date of receipt of the order, but not from the date of the order.

5.2.4. It is well settled law that, so far as the commencement of the period of limitation for filing the appeal is concerned the expression, "the date of that order" has to be construed as meaning the date of communication or knowledge of the order to the petitioner. Where the law provides a remedy to a person, the provision has to be so construed in case of ambiguity as to make the availing of the remedy practical and the exercise of power conferred on the authority meaningful and effective. A construction which would render the provision nugatory ought to be avoided. An order may be passed without the knowledge of anyone except its author, may be kept in the file and consigned to the record room or the file may lie unattended, unwittingly or by carelessness. In either case, the remedy against the order would be lost by limitation though the person aggrieved or affected does not even know what order has been passed. Such an interpretation cannot be countenanced. The words "the date of that order", therefore, mean and must be construed as meaning the date of communication or knowledge, actual or constructive, of the order sought to be reviewed, vide D.SAIBABA Vs. BAR COUNCIL OF INDIA reported in (2003) 6 SCC 186.

5.2.5. By a mechanical application of provision, in my considered opinion, the first respondent-appellate authority got himself misdirected by computing the period of limitation viz., two months from the date of the order instead of computing the period of two months from the date of receipt of the order. To give effect to Rule 17(b) of the Rules in spirit and substance, the period of limitation of two months prescribed for preferring an appeal should be computed from the date of receipt of the order in question, but not strictly from the date of the order itself. In the instant case, taking into consideration the period of two months for preferring the appeal, viz., from 3.9.1999 on which date the petitioner received the order copy, till the date of the appeal, viz., 22.10.1999, the appeal preferred by the petitioner is, undoubtedly, well within the time prescribed for preferring the appeal.

5.2.6. Issue No.(i) is answered in favour of the petitioner.

5.3.1. Issue No.(ii):- Whether the cancellation of the licence issued to the petitioner for the alleged violation of conditions (e) and (g) of the licence is sustainable in law?

5.3.2. The conditions (e) and (g) of the licence read as follows:
'(e) He shall maintain the accounts up-to-date. He shall render true and correct account for the money received from the parties and produce the records maintained by him for such inspection at any time before such officer as may be authorised to inspect them by the Licensing Authority.

(g) He shall set forth fully and truly the consideration or the value and all other facts and circumstances affecting the chargeability of any

instrument with duty or the amount of duty with which it is chargeable.'

5.3.3. Concededly, there is no reference as to any violation of condition (e) of the licence even in the show cause notice dated 23.10.19 97 issued by the third respondent, alleging that the petitioner failed to maintain the accounts truly and correctly with respect to the money received from the parties nor there was any allegation in the show cause notice dated 23.10.1997 that the petitioner failed to produce such records maintained by him with respect to the true and correct accounts for the money received by him at the time of inspection at any point of time. Hence, the finding of the first respondent that the petitioner committed breach of condition (e) of the licence is not only baseless, but also held to be arbitrary, unreasonable and hit by violation of principles of natural justice.

5.3.4. Similarly, a reading of condition (g) contemplates that the petitioner shall set forth fully and truly the consideration or the value of the property and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of duty with which it was chargeable. The condition that the licensee shall set forth the consideration or the value fully and truly would only indicate the consideration or the value that were agreed to between the parties to the document. The petitioner is only a document writer, who is obliged to write only what is agreed between the parties. The terms of the agreement for sale dated 9.6.1993 are relaxable by the parties to the sale, which cannot, in my considered opinion, be put against the document writer, to lead to the conclusion that the petitioner colluded with the parties, as the transaction relating to any conveyance thereon are purely binding the parties to such transaction. The petitioner in his explanation dated 23.12.1997 to the show cause notice dated 23.10.1997 submitted that the agreement for sale dated 9 .6.1993 was not even registered. That apart, there is no provision under the Rules and conditions that the Document writer shall have a copy of the documents, and therefore, he had no occasion to keep track of the valuation and consideration mentioned therein for future transactions particularly when it was not brought to his notice at the time of writing the sale deed dated 7.10.1993 by the parties to the sale deed.

5.3.5. In the absence of any such statutory provision, there is no duty cast on the petitioner either to recollect his memory with respect to the agreement for sale dated 9.6.1993 under which property was sought to be sold, much less the valuation or consideration of the same; nor he is expected to compel the parties to produce the copy of the agreement for sale particularly when such agreement for sale was neither registered nor referred to in the sale deed dated 7.10.1993. Hence, the petitioner cannot be found fault with for any such suppression or misrepresentation by the parties with respect to the consideration or valuation of the property in the sale deed dated dated 7.10.1 993 agreed to between the parties and consequently, the findings that the petitioner had colluded with the parties to the sale deed dated 7.10.1993 for evading stamp duty with respect to Document No.1843/93 and was responsible for the loss of revenue to the State are again arbitrary, perverse and unreasonable.

5.3.6. Hence, I am of the considered opinion, that the cancellation of the licence of the petitioner for the alleged violation of the conditions (e) and (g) of the licence is untenable in law and violative of Articles 14 and 19(1)(g) of the Constitution of India.

5.3.7. Issue No.(ii) is answered in negative.

6. For the aforesaid reasons, I am inclined to allow the writ petition and quash the impugned proceedings of the second respondent dated 2.7.1999 and the consequential order passed by the first respondentGovernment in G.O.(D)No.203, Commercial Taxes Department, dated 23.8.2 001. No costs.

Index : Yes
Internet: Yes

ATR

To,

1. The Secretary to Govt,
Commercial Taxes Department,
The State of Tamil Nadu,
Fort St. George,
Madras-9.

2. The Additional Registrar (Chits),
O/o. Inspector General of
Registration,
Chennai-28.

3. The Inspector General of
Registration,
Raja Annamalaipuram,
Chennai-600028.